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# SUPREME COURT OF THE UNITED STATES.

## No. 67.

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## LESSEE OF MARGARET LATIMER ET AL., PLAINTIFFS IN ERROR,

VERSUS

## DAVID UNDERWOOD.

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IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF NORTH CAROLINA.

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UNITED STATES OF AMERICA, *ss.*

The president of the United States to the honorable the judge of the circuit court of the United States for the district of North Carolina greeting: [L. S.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of

you; between John Den on the demurs of Margaret Latimer and others, plaintiff, and David Underwood, defendant, a manifest error hath happened, to the great damage of the said plaintiff as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Joseph Story, senior associate justice of the said Supreme Court, this of in the year of our Lord one thousand eight hundred and

WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

Allowed by
H. POTTER, *District Judge U. S. for Dist. N. Carolina.*

FIFTH CIRCUIT OF THE UNITED STATES, *North Carolina District*, to wit: } May Sessions, 1823.

John Doe, a citizen of the State of Pennsylvania, by his agent and attorney, complains of Richard Roe, a citizen of the State of North Carolina, in a plea of trespass in ejectment, for that Margaret Latimer, James Latimer, Elizabeth Latimer and Margaret Latimer, Jr., executors of George Latimer, and the legal representatives of William Cathcart, Dorithy Dale, John M. Dale, Edward C. Dale, Sarah Dale, and Elizabeth Dale, heirs and representatives of Richard Dale, John R. Latimer, Sarah Latimer, Mary R. Latimer, Henry Latimer, and James Latimer, heirs and representatives of Henry Latimer, citizens of the State of Pennsylvania, on the 1st day of July, 1825, at Haywood, in the said district of North Carolina, demised, and to farm let unto the said John Doe, one messuage, and a certain tract or parcel of land, containing forty nine thousand nine hundred and twenty acres, lying on the waters of Tuckesega river, in the county of Haywood, in the district aforesaid, and bounded as follows, to wit: beginning on two dogwoods corner to a large survey made for George Latimer and John G. Blount, now where the Buncombe county line bounds on South Carolina line, running north fifteen west five hundred and twenty-four poles, crossing the waters of Tuckesega river to a chesnut, then north fifteen west two hundred and ten poles to a white oak, thence north thirty-three west one thousand two hundred and seventy-two poles, crossing the waters of Tuckesega to a white oak, north twenty west two hundred and forty poles to a chesnut, then north eleven west seven hundred and twenty poles, crossing the waters of Tuckesega cane brake and sugar cove to a hickory, thence due west, with William Cathcart's other survey two thousand six hundred and eighty poles to a stake, on or near the South Carolina line, thence east along the supposed South Carolina line four thousand four hundred and eighty poles to the be-

ginning, with the appurtenances thereunto belonging, to have and to hold the said messuage and tract or parcel of land, with the appurtenances, unto the said John and his assigns, from the 1st day of July, 1825, in the year aforesaid, for the term of ten years thence next ensuing, and fully to be completed and ended. By virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 2d of July, 1825, with force and arms entered into the said tenements, with the appurtenances which the said Margaret Latimer, James Latimer, Elizabeth Latimer, and Margaret Latimer, Jr., executors of George Latimer, and the legal representatives of William Cathcart, Dorothy Dale, John M. Dale, Ed. C. Dale, Sarah Dale, Elizabeth Dale, heirs and representatives of Richard Dale, John R. Latimer, Sarah Latimer, Mary R Latimer, Henry Latimer and James Latimer, heirs and representatives of Henry Latimer, had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe then and there did to the great damage of the said John Doe, and against the peace and dignity of the United States; wherefore, the said John Doe saith that he is injured, and hath sustained damage to the value of ten thousand dollars, and therefore he brings this suit.

WM. GASTON, *Attorney.*

To DAVID UNDERWOOD:

I am informed that you are in possession of or claim title to the demised premises in this declaration of ejectment mentioned, or some part thereof, and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of the circuit court of the United States, in the fifth circuit for the district of North Carolina, to be held at Raleigh on the 12th day of November, 1825, next, personally or by some attorney of that court, and then and there by rule of the same court to cause yourselves to be made defendants in my stead, otherwise, I shall suffer judgment thereon to be entered against me by default, and you will be turned out of possession.

Your loving friend,

RICHARD ROE.

A copy of the within declaration in ejectment delivered, and defendant David Underwood, a citizen of Haywood county, and on Tuckesega river, the 3d of July, 1828.

B. DANIEL, *Marshal of N. Carolina.*
*By* SAML. M. D. TATE, *D. M.*

JOHN DOE, LESSEE OF MARGARET LATIMER AND OTHERS
*vs.*
RICHARD ROE. } Ejectment.

It is ordered, by the consent of the counsel on both sides, that David Underwood be made defendant, instead of the now defendant Richard Roe, the casual ejector, and forthwith appear at the suit of the plaintiff, recover declaration, and plead thereto at the present term the general issue, and at the

trial to be had thereupon, the said defendant shall confess lease, entry and ouster, and insist upon the title only ; otherwise a judgment be entered for the plaintiff against the non-defendants by default, &c.

And therefore the said David Underwood, by George E. Badger, esq., his attorney, came and defend the force and injury, and say that he is not guilty of the said supposed trespass and ejectment above laid to his charge, or any part thereof, in manner and form as the said John Doe hath above thereof complained against him, and of this he puts himself upon the country, and the said John Doe likewise : therefore, let a jury, &c., who, &c., came on the 12th day of May, now next, &c., at which day here came the parties aforesaid, by their attorneys aforesaid, and by consent of the said attorneys, day is given to the said parties touching their plea aforesaid, and the issue so joined between them, until the 12th day of November, now next—At which day came here the parties aforesaid, by their attorneys aforesaid, when day by the like consent is given until the 12th day of May, now next ; at which day here came the parties aforesaid, by their attorneys aforesaid, when day is given by the like consent until the 12th day of November, now next; at which day here came the parties aforesaid, by their attorneys aforesaid, when by the like consent day is given, until the 12th day of May, now next; when here came the parties aforesaid, by their attorneys aforesaid, when by the like consent day is given until the 12th day of November, now next ; at which day came the said parties by their said attorneys, when by the like consent day is given until the 12th of May, now next; at which day here came the parties aforesaid, by their attorneys aforesaid, when by the like consent day is given until the 12th day of November, now next ; at which day came the parties aforesaid, by their attorneys aforesaid, when by the like consent day is given until the 12th day of May, now next ; at which day came the parties aforesaid, by their attorneys aforesaid, when by the like consent day is given until the 12th day of November, now next; at which day here came the parties aforesaid, by their attorneys aforesaid, when day is given by like consent until the 12th day of May, now next; at which day here came the parties with their attorneys aforesaid, when by the like consent day is given until the 12th day of November, now next ; at which day here came the parties aforesaid, with their attorneys aforesaid, when by the like consent day is given until the 12th day of May, now next, to wit, the 12th day of May, 1835, at which day before the honorable Henry Potter, District Judge of the United States for the District of North Carolina, judge of said court, here came the parties, as well the plaintiff as the defendants by their attorneys aforesaid, when came also the following jury, to wit:—Joseph T. Hunter, Thomas Howerton, William Murry, Robert Taylor, John Rix, John Caruthers, John T. Ward, James Forrest, Amos Kimball, Robert Harrison, John Winslow and William F. Clark, who being elected, called, impannelled, and sworn to say the truth of and concerning the issue aforesaid, in manner and form aforesaid, joined, say upon their oath, that the defendant is not guilty of the trespass and ejectment laid to his charge in the declaration. Therefore, it is considered by the Court, that the said John Doe take nothing by his writ aforesaid.

DOE, LESSEE OF MARGARET LATIMER, and others,
*vs.*
DAVID UNDERWOOD.

Be it remembered, that on the trial of the issue in this cause the lessors of the plaintiff exhibited in evidence letters patent under the great seal of

North Carolina, signed by the governor and countersigned by the secretary of state, in the form of and purporting to be a grant to William Cathcart for the tract of land described in the declaration dated 20th July, 1796, and founded on entries made in the entry taker's office of Buncombe county in the year 1795, and it was admitted that the defendant David Underwood at the commencement of the action was in possession of a part of said land, and that the title (if any passed by the said letters patent to the said Cathcart) had descended upon and come to the said lessors; and it was admitted by the plaintiff that the land lay wholly within the limits of the boundary described and set forth in the 5th section of the act passed by the general assembly of North Carolina in the year 1783, entitled "an act for opening the land office for the redemption of specie and other certificates and discharging the arrears due to the army," and by the said section reserved to the Cherokee Indians and their nation forever; and it being objected by the defendant that the said alleged grant was void, because the said land at the time of the said entries and grant lay wholly within the territory so allotted to the Cherokee Indians, and within which entries and grants were prohibited by the sixth section of the said act, the plaintiff by his counsel prayed the court to instruct the jury, that in the year 1795 when the said entries were made and on the 20th July 1796 when said alleged grant was made, the prohibitions contained in the said sixth section, and all other prohibitions under the law of North Carolina against the entry and granting of lands within the Cherokee territory had been repealed and were no longer in force, and that therefore such entries were not unlawful, and the said alleged grant was valid to pass the proprietary interest of North Carolina to the land comprehended therein; but the court refused to grant the said prayers, and instructed the jury that the said prohibitions were in full force as to all lands within the said Indian territory to which the Indian title had not been extinguished at the time of the said entries and grants, to which refusal of the prayers of the plaintiff and to which instruction the plaintiff excepted.

The said plaintiff then prayed the court to instruct the jury that according to the true construction of the treaty of Holston, made 2nd July, 1791, the line described in the fourth article of said treaty running from the North Carolina boundary "north to a point from which a line is to be extended to the river Clinch, that shall pass Holston at the ridge which divides the waters that run into Little river from those running into Tennessee," ought to be run so far north and no farther than was absolutely necessary for extending therefrom a line that should pass the Holston at the said ridge and strike the river Clinch below the next line called for in said treaty, and that if the land described in the said grant lay wholly to the east or right of the line so to be extended from the said first point north of the boundary aforesaid from which it could be so extended, then the land lay within the territory to which the Indian title had been extinguished and might be lawfully entered and granted; but the court refusing such prayers instructed the jury that the line running north from the said North Carolina boundary did not by the treaty necessarily stop at the first point from which the next line as described by the treaty could be extended, but was to stop at such point as the commissioners for running of the lines of said treaty might thereafter agree upon, to the refusal of which prayer and to the said instruction the said plaintiff excepted.

Whereupon the said counsel for the plaintiff prayed of his honor, the said Henry Potter, judge as aforesaid, to affix his seal to this bill containing the